IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4459 of 2000

with
SPECIAL CIVIL APPLICATION NO.4460 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DINESHKUMAR R RAVAL

Versus

DEPUTY EXECUTIVE ENGINEER

Appearance:

1. Special Civil Application No. 4459 of 2000

MR DN PANDYA for Petitioner No. 1

MS SEJAL K MANDAVIA for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 07/10/2004

ORAL JUDGEMENT

1. In these petitions, the petitioner has challenged

the common award dated 26-11-1999 passed by the Labour Court, Bharuch in Reference (L.C.B.) no.295/1990 and Refernece (L.C.B.)no.1080/1988. The petitioners claiming to have worked for a long period as casual workers with the respondent, upon their termination had approached the Labour Court, Bharuch, by filing References and challenging their termination mainly on the ground of violation of provisions of Section 25F & 25G of the Industrial Disputes Act. Upon perusal of the award of the Labour Court, it appears that the Labour Court was inclined to reject the References of the workman mainly on the ground that the workman concerned have failed to establish that they worked for more than 240 days, and therefore, there was violation of provisions of Section 25F of the I.D.Act. The learned Counsel for the petitioners has, however, pointed that in the charter of demands, the petitioners had contended that the terminations were in violation of the principles of last come first go. In the depositions also the workman had contended that while terminating their services, juniors were retained by the respondents. Additionally, the petitioners have produced before this Court an order dated 30th March, 1989 on the basis of which the Counsel for the petitioners has contended that this would conclusively prove that persons junior to the petitioners were retained in service. It may be noted that, however, the said document i.e. order dated 30th March, 1989 was not produced before the Labour Court.

2. Despite the petitioners specifically raising the ground of terminations being in violation of principles of last come first go, the Labour Court in its award has not given any finding on this aspect of the matter. Besides, raising the contention in the charter of demands, the petitioners had also in their oral evidence sought to support this contention. In view of the fact that the said issue has not been decided by the Labour Court, and also in view of the fact that the petitioners now claim to have come into possession of the said order dated 30th March, 1989, upon which the petitioners would also like to rely, I find that it would be necessary to remand the matter before the Labour Court so that the Labour Court can decide the question of retention of juniors while terminating the services of the petitioners. Accordingly, the impugned award dated 26-11-1999 is hereby quashed and set aside. The References are remanded before the Labour Court for fresh consideration and adjudication after permitting both sides to lead further evidence if they desire to do so. It is requested that the Labour Court will attempt to conclude the fresh proceedings upon remand as far as

possible within a period of six months from the date of receipt of the copy of the order.

3. In view of the above directions, the petitions are disposed of. Rule is made absolute to the above extent with no orders as to costs in both these petitions.

(Akil Kureshi,J.)

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